IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.4823 OF 2003
AND
CRL.M.P.No.1718 OF 2003.

1.Adimadavan
2.Damodaran
3.K.G.Krishna ... Petitioners

-Vs-

1.State, by
the Sub Divisional Executive
Magistrate-cum-Revenue Divisional
Officer, Salem.
(Na.Ka.No.5430/2002/A2)

2.The Inspector of Police,
Shevapet P.S., Salem.
(Cr.No.381/2002) ... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioners : Mr.M.Mohanasundaram

For respondents : Mr.O.Srinath,
Government Advocate
(Crl.side)

:O R D E R

The above Criminal Original Petition has been filed under Section 48 2 of the Code of Criminal Procedure praying to call for the records in Roc.No.5430/2002/A2 on the file of the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, Salem and quash the same.
2. The petitioners, who are `A' party respondents No.1,4 and 6 among seven in the row, in which the `B' party respondents are also six in number, in the above proceeding initiated by the Sub Divisional Executive Magistrate, Salem against both the parties under Section 107 of the Code of Criminal Procedure, have come forward to file the above criminal original petition seeking for the relief extracted supra on grounds such as that the said

Executive Magistrate, as per his preliminary order dated 28.1.2003 has called for the petitioners to appear before him on 31.1.2003 at 10.00 a.m. and show-cause as to why the petitioners should not be directed to execute bonds for maintenance of peace and tranquility in the area under Section 107 of Cr.P.C. and that the said order is bad for the following reasons:
(i)that the order is not sustainable in law as per Section 111 of the Code of Criminal Procedure since it has not set forth the substance of the information received and the term in which the bond has to be executed;
(ii)that the Executive Magistrate has to pass a preliminary order under Section 111 of the Cr.P.C. but not under Section 107 of the Cr.P. C.;
(iii)that one incidence by itself cannot be an occasion for initiating the proceeding under Section 107 of the Cr.P.C.;
(iv)that the Executive Magistrate has committed an error in requiring the petitioners to execute the bonds, even before he had commenced the enquiry;
(v)that the instance cited do not connect all the petitioners;
(vi)that there is nothing to indicate that the Magistrate has made an objective assessment about the truth and the urgency of the information laid before him;
(vii)that the Executive Magistrate has passed the order without application of mind since there is no averment in the order as to how the Executive Magistrate has arrived at his subjective satisfaction that there is likelihood of breach of public peace and tranquility.
On such grounds, the petitioners have prayed for the quash the preliminary order passed by the Executive Magistrate.
3. During arguments, the learned counsel appearing on behalf of the petitioners would lay emphasis on the same points which have been set out above and would pray to quash the proceedings. On the other hand, the learned Government Advocate on the criminal side, appearing on behalf of the respondents, would submit that the learned Executive Magistrate has complied with all the legal requirements, such as the source of information, likelihood of the breach of peace and disturbance for public tranquility and that in the opinion of the Executive Magistrate, if any person is likely to commit a breach of peace or disturb the public tranquility or to do any lawful act that may probably occasion a breach of the peace, the Executive Magistrate may require such person to show-cause as to why he should not be ordered to execute the bond with or without surety for keeping the peace for such period not exceeding one year as the Magistrate thinks fit. The learned Government Advocate would also focus his attention on Section 111 Cr.P.C. regarding the order that is to be made as it has been made in the case in hand, the requirements of which are that he shall make the order in writing setting forth the substance of information received, the amount of bond to be executed, the term for which it is to be in force and the particulars of sureties, if any required and therefore the learned Government Advocate would ultimately pray to dismiss the above criminal original petition.
4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners and the learned Government Advocate contra, what could be assessed is that the petitioners, who are the members of `A' party respondents in the proceeding initiated by the Sub Divisional Executive Magistrate-cum-the Revenue Divisional Officer, Salem, raising certain grounds and quoting some judgments delivered in the past, which have been rendered to suit the facts

and circumstances of those cases dealt with by the learned Judges in the past, have come forward to file the above criminal original petition and this Court is of the view that it is necessary to find out on those grounds raised that whether the order made by the first respondent/the Sub Divisional Magistrate is proper or in violation of the provisions of law covering the subject.

5. At the outset, it must be mentioned that the order has been made under Section 111 of the Cr.P.C. and therefore factually it is false on the part of the petitioners to allege that the order has been made under Section 107 Cr.P.C. It could be further seen that in the first paragraph of the said order, the learned Magistrate has made it clear as to what is the subject matter, giving the cause of action for such an order to be made by the Magistrate so as to arrive at the conclusion that there is the likelihood of breach of peace and disturbance to the tranquility of the subject and therefore it cannot also be said that the reason for invoking the provisions of law under Sections 107 and 111 Cr.P.C. has not been mentioned in the order.

6. It is further glaringly seen that on an information furnished by the Shevapet Police authorities in connection with the Crime No.381/2 002, dated 27.6.2002 and submitting the first information report in the said case, the said police have requested the learned Magistrate to initiate the proceeding under Section 107 Cr.P.C. and therefore the source of information is also made very clear. It cannot be definitely said that on a single or isolated event that has occurred, a proceeding cannot be initiated under Section 107 Cr.P.C.. Even if it is a single incident or without any such incident having taken place, if the Magistrate receives any information that any person is likely to commit a breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion breach of peace and tranquility or disturb the public tranquility, it is sufficient ground for the Magistrate to initiate such a proceeding as it has been resorted to by the learned Magistrate in the case in hand so as to require the `A' and `B' party respondents to show-cause as to why they should not be ordered to execute the bond for keeping peace in the area.

7. It could also be further seen that the learned Magistrate has made a mention of the period for which the bond has to be executed being one year which is the maximum period given by law and also the amount of Rs.60,000/= being the amount of bond that is to be executed by the party respondents and in such event there is also no enquiry need be conducted as it has been claimed on the part of the petitioners for issuing such a preliminary order and after having issued the said order, the Magistrate could conduct the enquiry as he is pleased to have it whether within the local jurisdiction or outside the jurisdiction or even beyond his jurisdiction. Therefore, the preliminary order requiring the party respondents much less the petitioners issued in the proceeding mentioned supra by the first respondent/Sub Divisional Executive Magistrate-cum-the Revenue Divisional Officer, Salem is a perfect order made in compliance with the requirements of both Sections 1097 and 111 of the Cr.P.C. and there is no inconsistency or infirmity or patent error which are said to have occurred in the subject satisfaction arrived at by the learned Magistrate so as to issue the said order and therefore the interference of this Court sought tobe made into the well considered and merited order passed by the first respondent is not only unnecessary but unwarranted as well and hence the following order:

In result, there is no merit in the above criminal original petition and the same deserves only to be dismissed and is dismissed as such. Consequently, Crl.M.P.No.1718 of 2003 is also dismissed.

Index: Yes
Internet: Yes
Rao

To

1.The Sub Divisional Executive
Magistrate-cum-Revenue Divisional
Officer, Salem.

2.The Inspector of Police,
Shevapet P.S., Salem.

3.The Public Prosecutor,
High Court of Madras,
Chennai.